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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 2

[FAC 2005-69; FAR Case 2013-003; Item I; Docket 2013-0003,
Sequence 1]

RIN 9000-AM48

**Federal Acquisition Regulation; Definition of Contingency
Operation**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to revise the definition of "contingency operation" to address the statutory change to the definition made by the National Defense Authorization Act for Fiscal Year 2012.

DATES: Effective: [INSERT DATE OF PUBLICATION IN THE
FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Corrigan, Procurement Analyst, at 202-208-1963, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-69, FAR Case 2013-003.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the Federal Register at 78 FR 13765 on February 28, 2013, amending the FAR to revise the definition of "contingency operation" at FAR 2.101 in accordance with the statutory change to the definition made by paragraph (b) of section 515 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81, enacted December 31, 2011). The definition of "contingency operation" was amended at 10 U.S.C. 101(a)(13) by adding "12304a".

Paragraph (a) of section 515 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81), entitled "Authority to Order Army Reserve, Navy Reserve, Marine Corps Reserve, and Air Force Reserve to Active Duty to Provide Assistance in Response to a Major Disaster or Emergency," amends chapter 1209 of title 10, United States Code, by incorporating a new provision at section 12304a that provides for treatment of an operation as a contingency operation when the Secretary of Defense activates Reserves under the terms of 10 U.S.C. 12304a in response to a Governor's request for Federal assistance in responding to a major disaster or emergency declared by the President.

The interim rule therefore added a reference to 10 U.S.C. 12304a (from section 515 of the National Defense

Authorization Act for Fiscal Year 2012 (Pub. L. 112-81)) to the list of references in section (2) of the definition of "contingency operation" in FAR 2.101, Definitions.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) reviewed the public comments in the development of the final rule.

Only one comment was received. The respondent indicated that it concurred with the interim rule. Therefore, no change to the interim rule was deemed necessary for the final rule.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

Expanding the definition of "contingency operation" to include responding to a Presidential declaration of a major disaster or emergency (as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)) will increase the circumstances under which "contingency operations" may be declared, thereby allowing defense and civilian agencies to raise thresholds (i.e., micro-purchase and simplified acquisition thresholds) for acquisitions made in support of emergencies in accordance with the authorities listed at FAR 18.201, and exercise preferences, such as local area set-asides or evaluation preferences.

Because "local businesses" may vary in size and business ownership, and the locations of disasters vary, we do not expect the amendment to have a direct and sustained economic impact on a substantial number of small entities. However, there is the possibility that, because the Robert T. Stafford Disaster Relief and Emergency Assistance Act provides for a preference for local organizations, firms, and individuals when contracting for major disaster or emergency activities, implementation of the revised definition for "contingency operation" may increase opportunities for awarding contracts to small entities located at or near major disaster areas or emergency activities.

In addition, FAR 19.502-2(a) requires simplified acquisitions during a contingency operation within the United States (\$300,000 instead of \$150,000) to be automatically reserved for small businesses (with the usual exceptions). The ability to restrict purchases up to two times the normal simplified acquisition threshold for small businesses will have a significant positive impact on small entities.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subject in 48 CFR Part 2

Government procurement.

Dated: July 26, 2013

William Clark,
Acting Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

INTERIM RULE ADOPTED AS FINAL WITHOUT CHANGE

Accordingly, the interim rule amending 48 CFR part 2, which was published in the Federal Register at 78 FR 13765 on February 28, 2013 is adopted as a final rule without change.

[BILLING CODE 6820-EP]

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